DRN-4865293

The complaint

Mr F and Ms H complain about the amount Royal & Sun Alliance Insurance Limited ("RSA") has offered to settle a claim they made on their home insurance policy.

Reference to Mr F includes Ms H and their representative. And reference to RSA includes its agents. For ease of reading, I'll use rounded figures unless an exact figure is required.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr F originally took out a home insurance policy through an independent intermediary, who I'll call T, in 2017. At that time, the policy wasn't underwritten by RSA. When the policy renewed in December 2019, RSA became the underwriter. The policy covered Mr F's main home and an outbuilding that was rented out.

- Following fire damage to the outbuilding in July 2020, Mr F got in touch with RSA to make a claim for the building damage and loss of rent. RSA accepted both claims.

- RSA said Mr F was underinsured and settled the buildings claim by paying 75% of its value. When the policy renewed in 2019, the sum insured was £270,000 – but RSA said it ought to have been £350,000, so Mr F was only 75% insured. RSA also paid £27,500 for loss of rent, which didn't include any deduction for underinsurance. RSA said it wasn't responsible for how the policy was sold by T. And it said the claim had been handled fairly, including by its agents.

- Our investigator thought Mr F should have insured the property for £350,000, in line with RSA's figures. And had he done so, he would have paid a higher premium. So RSA should settle the claim based on the proportion of the premium Mr F paid compared to the higher premium. That meant increasing the settlement proportion from 75% to 92%. She also said RSA should increase the loss of rent payment to £45,000. She asked RSA to pay interest on the increased settlement amounts and pay £350 compensation for the stress and upset caused.

- Neither party agreed with our investigator, so the complaint has been referred to me.

My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- I've read and considered all the information Mr F has provided about the complaint. Whilst he's made many points, I won't reply to each and every one separately. I'll focus on what I consider to be the key reasoning for my decision. This isn't meant as a discourtesy, it's simply a reflection of the informal nature of this Service.

- This complaint is about RSA. As a result, I will only be able to consider how RSA and its agents acted in relation to matters RSA is responsible for. In summary, RSA is responsible for the claim, including handling and settling it fairly.

- T is an independent intermediary. It's responsible for selling and renewing the policy, including the questions asked, any guidance given, and supporting documentation. RSA isn't responsible for any of those matters. Whilst I know Mr F feels very strongly that those matters are relevant to the dispute, quite simply I can't consider them in this complaint about RSA. A separate complaint has been raised against T.

Reduction of the buildings claim settlement

- This is the main point of dispute. In summary, RSA accepted the claim and offered to settle for 75% of its value. It did this by relying on an 'average' clause in the policy which said: "if the sum insured is less than the full replacement cost, we will only pay the same proportion of the loss or damage as the sum insured bears to the full replacement cost".

- The sum insured at the 2019 policy renewal was £270,000 – but RSA said it ought to have been £350,000, so Mr F was only 75% insured in its view.

- This means RSA didn't think Mr F had provided reasonable information at the 2019 renewal. There are laws about the remedies available to insurers if they don't think a policyholder provided reasonable information at a sale or renewal. So I think it would have been fair and reasonable for RSA to consider those laws when it thought Mr F may be underinsured – and settle the claim in line with them. But it didn't do so. And if it had, I'm not satisfied it would have made any deduction. I'll explain why.

- When setting up the policy, RSA wanted to know the full rebuild cost of the property and for that to be set as the sum insured. RSA was entitled to take that approach. T was responsible for the sale and renewal of the policy, which included appropriately asking questions and giving guidance to Mr F in order to gather the information RSA wanted to know. And Mr F was required to provide reasonable information, based on what he knew, or ought reasonably have known, at that time.

- T told RSA the sum insured should be set to £270,000. RSA relied on the information given to it by T in order to setup the policy – and in my view, it was entitled to do so because T is an independent intermediary with its own responsibilities to Mr F.

- So when RSA thought Mr F may have been underinsured, the test it should have considered was whether £270,000 was a reasonable estimate of the full rebuild cost, based on the information Mr F knew, or ought reasonably have known, at the renewal in December 2019. The onus is on RSA to show that estimate was unreasonable – and what a reasonable estimate would have been.

- But RSA didn't consider that test. It considered whether Mr F had reached the same estimate as a professional valuation would produce. Whilst I know Mr F works in the industry and is capable of producing such an estimate, he wasn't required at the renewal to produce a professional valuation – so I think it would be unfair to hold him to that requirement.

- Three different professional valuations of the rebuild cost were prepared: £370,000, £350,000 and £430,000. Mr F also used a reputable and publicly available rebuild calculator, which estimated a figure of £290,000.

- RSA eventually arrived at a figure of £350,000 by removing the first figure, as it was disputed, and averaging the remaining three, including Mr F's. I think this was an attempt by RSA to reach a pragmatic position after much disagreement. However, RSA wasn't considering the correct test, so it's attempt was misguided.

- I understand when Mr F took out the policy in 2017, he'd recently been told by a loss adjuster in connection with a previous claim that a reasonable rebuild cost was £250,000. The policy was setup on that basis. By the time the policy renewed in 2019, and RSA became the underwriter, the sum insured had increased to £270,000. I think Mr F acted reasonably in 2019, because he took into account the information he was given by a loss adjuster as a reliable estimate for the rebuild cost, and it had been increased over time.

- If in 2019 Mr F had been guided to, or chosen to use, a rebuild calculator, he's shown that would have suggested a figure of £290,000. That's not disputed by RSA. Whilst that's clearly more than the sum insured, I don't think 8% is a significant enough difference to suggest the lower figure is an unreasonable estimate. The professional estimates provided during the claim vary by much greater amounts than that, showing the inherent challenge in accurately estimating a rebuild figure.

- And even if I thought £290,000 was a more reasonable estimate, I would then go on to consider what impact that had on the premium – in line with the relevant law. RSA has shown that this higher sum insured would have increased the premium slightly, by around 2%. I think that further highlights the relatively minor difference.

- As a result, I'm satisfied £270,000 was a reasonable estimate at the relevant time. In that case, the relevant laws say RSA have no remedy – so I don't think it was fair and reasonable for RSA to reduce the buildings claim at all.

- To put things right, RSA should settle the buildings claim without a deduction for underinsurance, although the remaining terms and conditions still apply. That will mean making an additional payment to cover the shortfall when it settled the claim. Ideally I would specify what payment to make. But I've seen different figures for the claim settlement, so I'll leave it up to RSA to calculate what payment to make. RSA should also add interest to that additional payment as Mr F has unfairly been without it for a period of time.

Loss of rent

- The policy covers loss of rent, up to 20% of the buildings sum insured, which is £53,721, during the period necessary to restore the property to a habitable condition. It doesn't set a maximum length of time.

- RSA accepted a claim for loss of rent to the outbuilding. In December 2021 it offered £27,500 to settle it and paid that sum in June 2022.

- The basis for this sum was as follows: The loss adjuster took actual income figures prior to the damage and estimated the average monthly income to be £1,500. As a result of the Covid pandemic, they increased that figure for periods when restrictions were lifted and decreased it during periods of restrictions. The outbuilding had been

uninhabitable since the date of loss in late July 2020 and remained that way when the loss adjuster estimated the loss of rent figures in November 2021. So the sum was estimated over that period of time.

- Mr F said the loss of rent was at least £500 per week, and the outbuilding had been uninhabitable for over two years, so the loss of rent exceeded the sum insured – and the full sum insured should be paid.

- RSA paid up to November 2021. As our investigator noted, it would have been fair to continue beyond that point, until such time as the outbuilding was, or ought reasonably have been, returned to a habitable condition, in line with the policy terms.

- Most of the buildings claim settlement was paid in June 2022. Whilst it was reduced to 75%, £27,500 was also paid for loss of rent at that time. So overall, I'm satisfied there would have been sufficient funding for Mr F to instruct a builder at that time. Bearing in mind the likely four month period of time for the builder to book in and complete the work, that means the outbuilding would likely have been returned to a habitable condition around October 2022.

- It's not possible to know exactly how much rent was lost each month, particularly given the uncertainty created by the changing pandemic restrictions during the relevant time. So a degree of pragmatism is required. I think both parties broadly agree that around £2,000 per month in late 2020 and summer 2021 would have been likely – with a significant drop in between due to restrictions. And from late 2021, the amount would likely have risen. So overall, I think an average of £2,000 per month throughout is reasonable based on the figures presented by both parties.

- By October 2022, at £2,000 per month, the sum insured would just have been reached. So I consider it fair and reasonable for RSA to settle the loss of rent claim at the full sum insured. As it's already paid £27,500, that leaves £26,221 to pay. This sum covers amounts due at various times, but if RSA had acted fairly, I think it would have paid it in full when settling the loss of rent in June 2022. So I think RSA should add interest to this additional payment from that time.

Recovery from third party

- The fire originated from land belonging to a third party. RSA appointed various professionals, including solicitors, to consider the prospects of recovering some or all of the claim cost from a third party. Ultimately RSA received legal advice that it should abandon recovery and that's what it did.

- Mr F questioned the evidence gathered by the professionals and their findings. As I understand it, he considers more evidence should have been gathered and/or the recovery pursued by RSA.

- The first professional report said the nature of the fire made it difficult to determine a cause and presented a number of possibilities. The author noted further work that could be undertaken but expressed caution about how likely that would be to further the investigation. As a result, RSA didn't explore that work.

- The second professional report also noted a number of possible causes and said they couldn't definitively determine the cause of the fire.

- The solicitor said they didn't think there was a prospect of recovery based on the professional reports.

- It's not my role to make a finding on the legal prospects of the recovery – it's to decide whether RSA acted fairly and reasonably in the circumstances. It took advice from appropriate professionals and acted in line with it. I wouldn't expect RSA to pursue recovery, or gather further information to support such action, unless there were reasonable prospects of success.

- I haven't seen any evidence from other professionals to challenge the opinions RSA relied on. In these circumstances, I'm satisfied RSA was entitled to rely on the findings and opinions of the professionals it appointed and to take the action it did in relation to the recovery.

Claim handling

- Part of the complaint is about the way RSA, through its agents, handled the claim. RSA is required to handle claims promptly and fairly. I've looked through the history of the claim and I'm not satisfied it always did that. I won't comment on each and every interaction between the parties or audit the claim handling. Rather, I'll focus on the points I consider key to explaining my view on this complaint point.

- The claim began in July 2020. RSA appointed a loss adjuster, who visited and reported soon after. The claim was accepted, and the issue of potential underinsurance arose. There was some confusion over the degree to which the loss adjuster thought Mr F was underinsured. And it was agreed for Mr F to appoint a surveyor to estimate the rebuild cost and begin scheduling repairs. RSA went on to appoint another surveyor to estimate the rebuild cost. And Mr F said he would prepare the schedule of repairs himself.

- In February 2021, the loss adjuster told Mr F RSA would settle the claim at 62% of its value, based on the latest surveyor rebuild estimate. Mr F didn't think it was fair to reduce the claim at all. A stalemate arose and communication became more adversarial. A complaint arose about an interim payment, which was answered in June 2021, and not referred to this Service in time, so I won't be able to consider it.

- By June 2021, Mr F had prepared the schedule of repair, shared it with builders, and received their estimates. After the estimates were assessed, the loss adjuster made an offer to settle the claim at 75% of its value – based on a range of rebuild estimates. Mr F rejected the offer and maintained it was unfair to reduce the claim.

- In December 2021, the loss adjuster increased the offer to factor in other work that had been done, such as demolition and removal of fire damaged items, but maintained the 75% reduction. Mr F rejected it. After a further stalemate, it was paid in June 2022. And after further discussion, the complaint was raised in October 2022.

- Overall, I'm satisfied RSA caused avoidable problems when settling the claim. It's misguided focus on the wrong test for the sum insured meant a considerable amount of time and effort was spent obtaining and discussing rebuild estimates, and the impact on the claim settlement – and that simply wasn't necessary. However, it would nonetheless have taken time and effort to prepare the schedule of repair, obtain and consider the estimates, and finalise the value of the buildings claim. That was largely driven by Mr F, so I can't hold RSA responsible for the time that took to complete.

- It's not possible to know exactly how long the claim would have taken to settle had RSA not caused avoidable problems. But given the time it took to finalise the value of the buildings claim, I think it would have been reasonable for RSA to have paid to settle the claim, without a deduction for underinsurance, on 1 September 2021. As a result, I consider it should add interest on the additional payment from that time.

- I can't award interest in isolation, so I can't require RSA to pay interest on the claim settlement it made in June 2022 from 1 September 2021. But I can consider whether compensation should be paid for the distress and inconvenience caused to Mr F by the delayed payment – together with the distress and inconvenience caused by the time and effort wasted on the underinsurance issue. Aside from that, I haven't seen any significant delays or other concerns with the way the claim was handled, including the potential recovery.

- When considering compensation, I take into account Mr F's particular circumstances, including Ms H's health and the impact on day to day living as a result of damage to the outbuilding rather than the main home. I must also bear in mind that Mr F was represented throughout and I can't award compensation for any distress and inconvenience suffered by a representative. With all this in mind, I'm satisfied the £350 compensation suggested by our investigator is a fair and reasonable figure.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- RSA didn't replay to my provisional decision. So I assume it accepts my findings and has no challenge or comment to make.

- Mr F replied and made a number of points, which I'll summarise:

    - I had overlooked or ignored issues Mr F considered "highly relevant", such as the sales process, clarity of policy documentation, and the use of outsourcing in the general insurance market.
    - The level of compensation I intended to award wasn't fair or reasonable, was less than the maximum award limits available to me, and more may have been awarded if the matter had gone to Court.
    - Mr F continues to suffer a loss of rent, so RSA should continue to pay it.
    - In relation to the potential recovery from the third party, there was a potential conflict of interest between RSA and other parties.

- My provisional decision is set out in full above, and forms part of my overall final decision, so I won't repeat it here. But I will highlight that I told Mr F I'd read and considered all the information he'd provided. And I wouldn't respond separately to each and every point he'd made. Instead, I would focus on what I considered to be the key reasoning for my decision. I did so because this Service was setup to resolve disputes fairly and reasonably, quickly and with minimum formality. As a result, when explaining my decision, my role is to concentrate on the points I consider most relevant to achieve that purpose – not to comment on all points made by the parties.

- Before reaching my provisional decision, I took into account all the points Mr F made, including the way the policy was sold, how clear the policy documents were, and the impact of any responsibilities RSA outsourced during the sale and claim. But I didn't consider these points most relevant or key to reaching or explaining my decision. So

I didn't comment on them. Having thought again about what Mr F has said, my view remains the same. It follows that I won't be commenting on them further.

- Our Service was setup as an alternative to the Court, so we don't necessarily consider matters, or make awards, in the same way as a Court. As a result, whether a Court might award more to Mr F isn't relevant. In my provisional decision, I set out in detail my reasoning for the level of compensation I thought was fair and reasonable in Mr F's particular circumstances. Mr F hasn't provided any further information about that. So my view remains the same.

- I also explained why I thought it would be fair for RSA to pay the policy limit for loss of rent – and why that sum would have paid Mr F's likely loss of rent cover up to the point the outbuilding could reasonably have become habitable again. Whilst Mr F didn't return the outbuilding to that condition at that time, I'm satisfied he had the opportunity to do so. As a result, I'm not satisfied any further loss of rent he may have incurred is something I can reasonably hold against RSA.

- I haven't seen any evidence to show a conflict of interest between RSA and any other party has been established in relation to the potential recovery. Nor have I seen that any of the professional opinions RSA relied on, including the solicitors, were impacted by the relationships between any of the parties. Those opinions were based on, and limited to, the merits of the potential recovery – and found there weren't sufficient merits to justify RSA proceeding with it. Those opinions weren't influenced by the relationships between the parties, so they can't have been based on any potential conflict of interest, even if one were to exist. Whilst I know Mr F feels strongly that RSA ought to have done more in relation to the potential recovery, I haven't seen any professional opinions to challenge the ones RSA relied on. So I remain satisfied RSA acted fairly and reasonably in relation to the potential recovery.

- Overall, RSA hasn't challenged any of the findings in my provisional decision. And none of Mr F's challenges have changed my mind. I remain satisfied the outcome I reached is a fair and reasonable one, in all of the circumstances.

My final decision

I uphold this complaint.

I require Royal & Sun Alliance Insurance Limited to:

- Settle the buildings claim without a deduction for underinsurance by making an additional payment*.
- *To that payment, add interest at 8% simple per annum, from 1 September 2021 to the date of settlement.
- Pay £26,221 for loss of rent**.
- **To that payment, add interest at 8% simple per annum, from 1 June 2022 to the date of settlement.
- Pay £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms H to accept or reject my decision before 19 July 2024.

James Neville
Ombudsman